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Live Poultry Growers' and Sellers' Rights Under P&S Trust Provision

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The trust provision of the Packers and Stockyards (P&S) Act gives certain kinds of protection to those who sell live poultry or provide growout services to poultry dealers and don't get paid. However, the protection is not available in all cases and is not automatic. To get the benefit of the trust provision, you must understand what the P&S Act does and does not provide, what the U.S. Department of Agriculture (USDA) can and cannot do, and what you as a poultry grower or seller must do to protect your own interest.

Who is covered under the trust provision?

Growers are protected

If you are engaged in raising and caring for live poultry for slaughter by someone else, you are protected under the trust provision. When poultry is produced under a growing arrangement, the law does allow a poultry dealer to pay by the close of the 15th day following the week in which the poultry is slaughtered. A "poultry growing arrangement" is defined as a growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accordance with another's instructions for slaughter. If you have not been paid within this time, then you must make notification as outlined below.

Cash sellers are protected

Cash sellers are protected by the trust provision. A cash seller is one who sells live poultry and does not expressly extend credit. This is not as simple as it may seem, however, and you must be careful about what you agree to and what you sign.

Here are two possible situations that show how you could easily lose your rights under the trust provision:

- Suppose when your poultry is delivered, you are handed a check for the full amount of the purchase price. If you believe that the check is good and you promptly deposit or cash it, you have not extended

credit. If, on the other hand, you deliver your poultry and agree to give the buyer time to cover a check that you know is not good, you may lose the benefit of the trust provision. This may be considered an extension of credit rather than a cash sale.

- Suppose when your poultry is delivered, you agree that a check may be handed to you by the close of the next business day. This is not an extension of credit, and you have the benefit of the trust provision. But you lose it if you agree on a longer period because that is considered an express extension of credit.

Read documents carefully before signing

The prompt pay provision of the P&S Act does permit an express credit agreement between buyer and seller. These agreements may be included in small print on various documents. Never sign anything without reading everything, including the small print. Never sign anything you do not understand. By doing so, you could compromise your interest in the trust by raising a question of your intention to sell on a cash basis. The law does not provide for credit on poultry produced under a growing arrangement.

What to do first if you don't get paid

The first thing to do is to give written notice to *both* the poultry dealer and the closest P&S regional office that the poultry dealer has failed to pay for live poultry or poultry produced under a growout arrangement. The notice can be given by letter, mailgram, or telegram, but *it must be in writing*. A suggested form for this notice appears near the end of this pamphlet. If you do not give the required written notice, you lose the benefit of the trust provision.

There is a time limit for giving that notice

If a payment instrument is not honored for any reason—for example, a check bounces—you, as a grower or seller of poultry, must give such notice within *15* business days after you receive notice that the instrument is dishonored.

If no payment instrument is received—for example, you do not receive a check—the time limit is 30 days after the date for making final payment.

If you sell live poultry, then you must make notification within 30 days from the close of the next business day following the purchase of the poultry.

If you produce poultry under a growing arrangement, then you must make notification within 30 days from the close of the 15th day following the week in which the poultry is slaughtered.

Do not delay giving your notice or you may lose the benefit of the trust provision.

What is a poultry dealer?

A live poultry dealer is someone who engages in the business of obtaining live poultry under a poultry growing arrangement or by purchase either for slaughtering or for sale to another for slaughter.

Which poultry dealers are subject to the trust provision?

Not all poultry dealers are subject to the trust provision—only poultry dealers whose average annual purchases, sales, or value of poultry produced under a growing arrangement exceed \$100,000. Smaller poultry dealers are not subject. If you do not know whether a poultry dealer is subject to the trust provision, contact the closest P&S regional office.

What property of a poultry dealer is subject to a trust?

Not all property of a poultry dealer is subject to a trust under the provision—only poultry bought in cash sales, poultry produced under growing arrangement, inventories, receivables, and proceeds derived from that poultry. Other property is not subject to such a trust—for example, plant equipment and buildings.

What USDA can and cannot do

USDA can penalize a poultry dealer for failing to pay for poultry or for poultry produced under a growing arrangement, as a violation of the P&S Act. And while these proceedings are in progress, USDA can ask a court to enjoin a poultry dealer from future violations of the P&S Act. However, USDA cannot furnish you with a lawyer to collect payment for you, and it cannot compel a poultry dealer to pay you.

What a court can do

A court can order a poultry dealer to hold the specified property in trust for the benefit of growers or unpaid cash sellers of poultry who have given the notices as required. A court can only order this upon receiving a written complaint. A complaint may be filed by any grower or unpaid cash seller of poultry.

What you must do after such a court order

If such a court order is issued—whether USDA or anyone else filed the complaint—you, as an unpaid grower or cash seller, must petition the court to order payment to you from the property held in trust. If you do not, the court may order that property to be distributed to other growers or unpaid cash sellers who file a petition.

The following form can be used for notifying the poultry dealer and the closest P&S regional office that the poultry dealer has failed to pay. Send a copy to each.

Notification to Preserve Trust Benefits

Identification of poultry dealer: _____

Identification of seller or grower: _____

Date of transaction: _____

Date of seller's or grower's receipt of notice that a payment instrument has been dishonored (if applicable): _____

Amount of money due: \$ _____

For more information

If you have questions, contact one of these regional Packers and Stockyards offices:

(If you're in Arizona, California, or Nevada):

Rm. 2W6, Federal Office Bldg.
15000 Aviation Blvd.
Lawndale, California 90261
Phone: (213) 297-1687

(If you're in Idaho, Oregon, or Washington):

9370 S.W. Greenburg Road
Suite 311
Portland, Oregon 97223
Phone: (503) 221-2687

(If you're in Colorado, Montana, New Mexico, Utah, or Wyoming):

307 Livestock Exchange Bldg.
Denver, Colorado 80216
Phone: (303) 294-7050

(If you're in Minnesota, North Dakota, South Dakota, or Wisconsin):

208 Post Office Bldg.
Box 8
South St. Paul, Minnesota 55075
Phone: (612) 290-3876

(If you're in Iowa or Nebraska):

909 Livestock Exchange Bldg.
Omaha, Nebraska 68107
Phone: (402) 221-3391

(If you're in Kansas or Missouri):

828 Livestock Exchange Bldg.
Kansas City, Missouri 64102
Phone: (816) 374-2368



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(If you're in Oklahoma or Texas):

Rm. 8A36, Federal Bldg.
819 Taylor Street
Fort Worth, Texas 76102
Phone: (817) 334-3286

(If you're in Illinois, Indiana, Kentucky, Michigan, or Ohio):

434 Federal Bldg. & U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204
Phone: (317) 269-6424

(If you're in Arkansas, Louisiana, Mississippi, or Tennessee):

Rm. 459, Federal Bldg.
167 North Main Street
Memphis, Tennessee 38103
Phone: (901) 521-3414

(If you're in Alabama, Florida, Georgia, or South Carolina):

Rm. 338, 1720 Peachtree Street, N.W.
Atlanta, Georgia 30309
Phone: (404) 347-4845

(If you're in Connecticut, Maine, New York, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, or Vermont):

1860 Charter Lane, Suite E
Lancaster, Pennsylvania 17601
Phone: (717) 299-6324

(If you're in Delaware, District of Columbia, Maryland, North Carolina, Virginia, or West Virginia):

P.O. Box 1027
Turnpike Road
Bedford, Virginia 24523
Phone: (703) 982-4330